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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,099	01/04/2001	Richard E. Vogel	70254-328	8152

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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/681,099

Applicant(s)

VOGEL ET AL

Examiner

Joe Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-30 and 32-51 is/are rejected.
- 7) ☒ Claim(s) 18 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Objections

1. Claim 33 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 33 specifies the same overlap and retention as in claim 32.

Claim Rejections - 35 U.S.C. § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 17, 39-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 17, depends from a claim where the protrusion in on the collar and not the sleeve. The collar has the insert portion and not the sleeve. The claim specifies that the sleeve has a rib on the insert portion of the sleeve. There is no antecedent basis for this limitation. It is unclear what is being claimed. Regarding claims 39-51, the claims are directed to the sleeve (subcombination) and then limitations are set forth regarding the combination with the cup and the collar. The relationships have more to do with the size of the collar and the size of the cup which are not positively recited. A cup that is too tall or too short will prevent the

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functional relationship from being satisfied. It appears that applicant is trying to hinge patentability on the height of the sleeve in relation to the non-claimed cup. Applicant should claim the structure that is inherent to the sleeve and not how it relates to the cup or to the collar. It is unclear what is being claimed.

Claim Rejections - 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 39-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Marsters et al (US 1,035,718). Regarding claims 39-46, the functional relationships to the cup and the collar do not require any structure that is not in the reference. Moreover, the cup and the collar are not required by the claim. Additionally, cups and collars exist that will satisfy the functional relationships. See Fig. 1, where 1 is the sleeve. Regarding claims 44-46, the inner surface of the sleeve is the friction enhancer. The material is frictional.

6. Claims 39-46 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Stokes (US 3,592,501). Regarding claim 39-46, the functional relationships to the cup and the collar do not require any structure that is not in the reference. Moreover, the cup and the collar are not required by the claim. Additionally, Cups and collars exist that will satisfy the functional

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relationships. See Fig. 1, where 1 is the sleeve. Regarding claims 44-46, the inner surface of the sleeve is the friction enhancer. The material is frictional. Regarding claim 51, see Figs. 1-3 where the slot is shown and the grasping of the cup is taught.

7. Claims 39-47, are rejected under 35 U.S.C. 102(b) as being anticipated by Fitzgerald et al. Regarding claim 39-46, the functional relationships to the cup and the collar do not require any structure that is not in the reference. Additionally, there exist cups and collars of appropriate size that will satisfy the functional relationships. See Fig. 1, where 1 is the sleeve. Regarding claim 42, the bottom has an air passage therethrough. Regarding claim 43, the sleeve is tapered. Regarding claims 44-46, the inner surface of the sleeve is the friction enhancer. The material is frictional. Regarding claims 49 and 50, the rib is an embossment and is longitudinal.

Claim Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Amberg. Regarding claims 48 and 49, Marsters et al does not teach the annular ring. Amberg teaches a sleeve or holder with an annular ring on the inner surface of the sleeve. It

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would have been obvious to employ the ring of Amberg in the sleeve of Marsters et al to more securely hold the cup in the sleeve. The annular ring is an embossment.

10. Claims 47, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Fitzgerald et al. Regarding claims 47 and 50, Marsters et al does not teach the longitudinal ribs on the interior of the sleeve. Fitzgerald et al teaches a container holder or sleeve with longitudinal ribs. It would have been obvious to employ the ribs of Fitzgerald et al in the holder of Marsters et al to more securely hold the cup. Regarding claim 49, the ribs are embossments.

11. Claims 1-12, 19-29, and 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR 1,437,341. Regarding claims 1, 19, and 32, Marsters et al does not teach the collar. FR '341, as seen in the Figs 1 and 2, teaches a collar for a cup. It would have been obvious to employ the collar of FR '341 in the cup of Marsters et al so that the cup could be used by infants. The collar will cause the cup to be retained between the collar and the sleeve. Regarding claims 8 and 25, see Fig.2 of FR '341 where the shoulder is shown that limits the insertion of the collar. Regarding claims 9-12, 26-29, and 34-37, the inner surface of the parts are the enhancer. The material is frictional. Regarding claim 13, official notice is taken that it is well known to add rubber gaskets to parts that are be mated. It would have been obvious to provide a gasket between the parts to provide a liquid tight joint.

12. Claims 14-16, 30, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR '341 as applied to claim 11 above, and further in view of Smith et al.

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The modified container of Marsters et al does not teach the protrusion on the insert portion of the collar. Smith et al teaches a collar for inserting into a container with a protrusion on the insert portion. It would have been obvious to employ the rib of Smith et al in the modified container of Marsters et al to provide a liquid tight seal as taught by Smit et al. Regarding claims 15 and 16, the protrusion is an annular rib and an embossment.

13. Claim 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR '341 and Smith et al as applied to claim 14 above, and further in view of Fitzgerald et al. Regarding claim 17, as it is best understood, the modified container of Marsters et al does not teach the longitudinal rib on the inner surface of the sleeve (the insert portion in on the collar). Fitzgerald et al teaches a holder or sleeve with ribs on the inner surface for holding the inner container. It would have been obvious to employ the ribs of Fitzgerald et al in the modified container of Marsters et al to better retain the cup in the sleeve.

14. Claims 1-7, 9-13, 19-24, 26-29 and 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635). Regarding claims 1, 20, and 32, Marsters et al does not teach the collar. Schmiedeknecht as seen in the Fig., teaches a collar for a cup. It would have been obvious to employ the collar of Schmiedeknecht in the cup of Marsters et al to provide a hygienic drinking surface. The collar will cause the cup to be retained between the collar and the sleeve. Regarding claims 9-12, 26-29, and 34-37, the inner surface of the parts are the enhancer. The material is frictional. Regarding claim 13, official

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notice is taken that it is well known to add rubber gaskets to parts that are be mated. It would have been obvious to provide a gasket between the parts to provide a liquid tight joint.

15. Claims 14-16, 30, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635) as applied to claim 11 above, and further in view of Smith et al. The modified container of Marsters et al does not teach the protrusion on the insert portion of the collar. Smith et al teaches a collar for inserting into a container with a protrusion on the insert portion. It would have been obvious to employ the rib of Smith et al in the modified container of Marsters et al to provide a liquid tight seal as taught by Smit et al.

Regarding claims 15 and 16, the protrusion is an annular rib and an embossment.

16. Claim 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635) and Smith et al as applied to claim 14 above, and further in view of Fitzgerald et al. Regarding claim 17, as it is best understood, the modified container of Marsters et al does not teach the longitudinal rib on the inner surface of the sleeve (the insert portion in on the collar). Fitzgerald et al teaches a holder or sleeve with ribs on the inner surface for holding the inner container. It would have been obvious to employ the ribs of Fitzgerald et al in the modified container of Marsters et al to better retain the cup in the sleeve.

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Allowable Subject Matter

17. Claims 18 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moore, Stakke, Presley et al, Wolf, D'Erocoli, Brime, Ventimiglia et al, Gold, and Ballway are all cited for teaching cup structure. Gearin for teaching a mixing extension for a container.

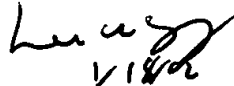
19. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses in Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe Merek whose telephone number is (703) 305-0644.

Joe Merek/jm

January 13, 2002


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